

**State of California  
Office of Administrative Law**

**In re:**  
**Board of Forestry and Fire Protection**

**Regulatory Action:**

**Title 14, California Code of Regulations**

**Amend section: 1038**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL Matter Number: 2018-0116-01E**

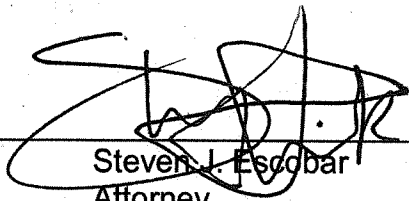
**OAL Matter Type: Emergency (E)**

In this emergency rulemaking, the Board of Forestry and Fire Protection is providing an exemption from the plan preparation and submission requirements and from the completion report and stocking report requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Public Resources Code section 4511, et seq.) to persons engaging in specified forest management activities. This exemption includes cutting or removing dead or dying trees when the trees are within 300 feet of an Approved and Legally Permitted Structure that was damaged or destroyed by wildfire during the October 2017 Northern California wildfires in Mendocino, Napa, and Sonoma Counties.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 1/25/2018 and will expire on 7/25/2018. The Certificate of Compliance for this action is due no later than 7/24/2018.

**Date: January 25, 2018**

  
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Steven J. Escobar  
Attorney

**Original: Matt Dias, Acting Executive  
Officer  
Copy: Eric Hedge**

**For: Debra M. Cornez  
Director**

# EMERGENCY

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2018-0116-01E</b>
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For use by Office of Administrative Law (OAL) only

**2018 JAN 16 A 9:58****OFFICE OF  
ADMINISTRATIVE LAW****ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of California**JAN 25 2018****1:44PM**

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

Board of Forestry and Fire Protection

AGENCY FILE NUMBER (if any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) <b>EMERGENCY RULEMAKING TO FACILITATE POST-FIRE RECOVERY EFFORTS WITHIN THE COUNTIES OF NAPA, SONOMA, AND MENDOCINO</b>	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

<b>SECTION(S) AFFECTED</b> (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND <b>1038</b>
	REPEAL
TITLE(S) <b>14</b>	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON

Eric Hedge	TELEPHONE NUMBER <b>916.653.9633</b>	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) <b>eric.hedge@bof.ca.gov</b>
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNER

DATE

**January 16, 2018**

TYPED NAME AND TITLE OF SIGNATORY

Eric Hedge, Regulations Coordinator, Board of Forestry and Fire Protection

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED****JAN 25 2018****Office of Administrative Law**

1                                    Board of Forestry and Fire Protection

2    **Emergency Rulemaking to Facilitate Post-Fire Recovery Efforts within Counties**  
3                                    **of Napa, Sonoma and Mendocino**

4                                    Title 14 of the California Code of Regulations (CCR),  
5                                    Division 1.5, Chapter 4,  
6                                    Subchapter 7, Article 2

7  
8    **Amend:**

9    **§ 1038. Exemption.**

10    ...

11    (l) The cutting or removal of trees to restore and conserve California black (*Quercus*  
12    *kelloggii*) or Oregon white (*Quercus garryana*) oak woodlands and associated  
13    grasslands, if all the following requirements are met:

14    ...

15    (8) 14 CCR § 1038(l) shall become inoperative on January 1, 2024.

16    (m) Harvesting dead or Dying Trees of any size to facilitate the removal of hazardous  
17    material and the reconstruction or construction of Approved and Legally Permitted  
18    Structures that were damaged or destroyed by wildfire in the Counties of Napa, Sonoma  
19    or Mendocino during October of 2017. The provisions of a Notice of Exemption  
20    submitted pursuant to this subsection supersede the provisions of any other Notices of  
21    Exemption that are submitted in the same Harvest Area. In addition to compliance with  
22    14 CCR §§ 1038(b)(1)-(10) and 1038.1, the following apply:

23        (1) Only trees within three hundred (300) feet from any point of an Approved and  
24        Legally Permitted Structure that was damaged or destroyed by wildfire may be  
25        harvested.

1 (2) The Notice of Exemption shall include:

2 (A) the requirements of 14 CCR § 1038.2(a)-(c);

3 (B) the total acreage of the Harvest Area;

4 (C) an enlarged 7½ minute quadrangle map, or its equivalent, that is not less  
5 than one (1) inch equals 1,000 feet showing the location of the boundaries of  
6 the Harvest Area;

7 (D) a certification of ownership signed by the timberland owner and;

8 (E) the tentative commencement date of Timber Operations.

9 (3) Timber Operations conducted under this subsection shall conform to  
10 applicable city or county general plans, city or county implementing ordinances, and city  
11 or county zoning ordinances within which the Harvest Area is located. The Timber  
12 Operator or timberland owner shall certify that the city or county has been contacted  
13 and the Timber Operations conducted under the Notice of Exemption conforms with all  
14 city or county regulatory requirements.

15 (4) All Slash and Woody Debris greater than one (1) inch but less than eight (8)  
16 inches in diameter within one-hundred-fifty (150) feet of an Approved and Legally  
17 Permitted Structure that was damaged or destroyed by wildfire shall be removed,  
18 chipped or piled and burned.

19 (5) All Slash created between one-hundred-fifty (150) feet and three hundred (300)  
20 feet of an Approved and Legally Permitted Structure that was damaged or destroyed by  
21 wildfire shall be treated by Lopping for Fire Hazard Reduction, removed, chipped or  
22 piled and burned within forty-five (45) days from the start of Timber Operations; except  
23 for the burning of piles, which shall be accomplished not later than April 1 of the year  
24 following their creation; or for piles created on or after September 1, not later than April  
25 1 of the second year following creation.

1       (6) Except where necessary for safety, retain an average for the Harvest Area of  
2 not less than one (1) Decadent and Deformed Tree of Value to Wildlife, Snag, or Dying  
3 Tree per acre that is greater than sixteen (16) inches DBH and twenty (20) feet tall.

4 This provision does not apply within one hundred (100) feet of Approved and Legally  
5 Permitted Structures, roads, fire suppression ridges and infrastructure facilities such as  
6 transmission lines and towers, or water conveyance and storage facilities.

7       (7) Within a fifteen (15) day period before beginning Timber Operations, the  
8 Timber Operator shall notify the Department of the actual commencement date for the  
9 start of Timber Operations. The starting date shall be directed to the designated  
10 personnel at the appropriate CAL FIRE Unit Headquarters by telephone, email, or by  
11 mail.

12       (8) Timber Operations pursuant to this Notice of Exemption may not commence  
13 for five (5) working days from the date of the Director's receipt of the Notice of  
14 Exemption unless this delay is waived by the Director. The Director shall determine  
15 whether the Notice of Exemption is complete, and if so, shall send a copy of a notice of  
16 acceptance to the submitter. If the Notice of Exemption is not complete and accurate, it  
17 shall be returned to the submitter and the Timber Operator may not proceed. If the  
18 Director does not act within five (5) working days of receipt of the Notice of Exemption,  
19 Timber Operations may commence.

20       (A) Timber Operations may not be conducted without a copy of the accepted  
21 Notice of Exemption at the operating site, except where the Director has failed to act  
22 within the five (5) working day review period.

23  
24 [no changes to pictures printed at the end of this section]  
25

1 Note: Authority cited: Sections 4551, 4553, and 4584 and ~~4584.1~~, Public Resources  
2 Code. Reference: Sections 4290, 4291, 4516, 4527, 4584, ~~4584.1~~ and 4597, Public  
3 Resources Code; and *EPIC v. California Department of Forestry and Fire Protection*  
4 *and Board of Forestry* (1996) 43 Cal. App.4th 1011.

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